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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,775	04/16/2004	Charlene Wynn	2853.CWYN.PT	1291
26986	7590	03/14/2005	EXAMINER	
MORRISS O'BRYANT COMPAGNI, P.C. 136 SOUTH MAIN STREET SUITE 700 SALT LAKE CITY, UT 84101			BAXTER, GWENDOLYN WRENN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/826,775	WYNN, CHARLENE
	Examiner Gwendolyn Baxter	Art Unit 3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date 3/7/05.

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

This is the first Office action for serial application 10/826,775, Christmas Tree Stand filed April 16, 2004.

***Information Disclosure Statement***

The information disclosure statement filed June 7, 2004 has been placed in the application file, and the information referred to therein has been considered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11, 16, 17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 5, "a tree" should read -the tree- to reflect antecedence provided at line 2 of claim 1. Similar problem occurs in claims 6 and 16.

In claim 11, line 3, "a supporting surface" should read -the supporting surface- reflecting antecedent basis provided at line 4 of claim 1. Similar problem occurs in claim 17.

In claim 19, line 2, "said drainage apparatus" lacks proper antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, 11, 12 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,299,381 to Oldenburg, Jr. The present invention reads on Oldenburg as follows: Oldenburg discloses a tree stand comprising a reservoir structure (13), legs (22) and movable arms (15). The reservoir is structured for receiving a tree and has a compartment for holding water. The legs are adjustably secured to the reservoir for selectively adjusting the height of the reservoir relative to a supporting surface. The movable arms are secured to the reservoir and positioned to engage the trunk of a tree to stabilize the tree in a vertical position within the reservoir. Wheels or movement device (20) are attached to the legs for moving the stand and the tree engaged by the stand. Leg brackets (18, 19) are secured to the reservoir and structured to movably secure the legs to the reservoir. The legs are vertically adjustable relative to the reservoir to selectively adjust the distance between the bottom of the reservoir and the supporting surface for the wheels.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oldenburg in view of U.S. Patent No. 5,966,864 to Flink. Oldenburg teaches the limitations of the base claim, excluding a drainage apparatus and a window positioned on the reservoir.

Flink teaches a tree stand comprising a reservoir (16) including a drainage apparatus (60-89) and a window (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the reservoir as taught by Oldenburg to have incorporated the drainage apparatus and window for draining and filling the reservoir in addition to gauging the water level of the reservoir.

Claims 5-7, 13, 16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oldenburg in view of U.S. Patent No. 5,114,113 to Krinner. Oldenburg teaches the limitations of the base claim, excluding movable arms, at least one ring and at least one tree engaging element.

Krinner teaches a tree stand comprising a reservoir (6) including movable arms (14-18) thereto attached, a ring (66) and at least one tree engaging element (72). The movable arms each have a tree engaging apparatus (88) extending from the movable arms and positioned to engage the outer surface of a tree trunk. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the reservoir as taught by Oldenburg to have incorporated the aforementioned components as taught by Krinner for the purpose of further stabilizing the tree with the reservoir.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oldenburg in view of Krinner as applied to claims 5-7, 13, 16, 18 and 20, and in further view

of U.S. Patent No. 5,966,864 to Flink. Oldenburg in view of Krinner teaches the limitations of the base claim, excluding a drainage apparatus and a window positioned on the reservoir.

Flink teaches a tree stand comprising a reservoir (16) including a drainage apparatus (60-89) and a window (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the reservoir as taught by Oldenburg in view of Krinner to have incorporated the drainage apparatus and window for draining and filling the reservoir in addition to gauging the water level of the reservoir.

#### *Allowable Subject Matter*

Claims 9 and 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

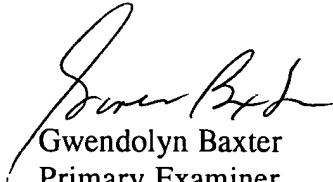
#### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Molthen 5,159,780 teaches a ring.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702. The examiner can normally be reached on Monday-Wednesday, 8:00am -5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

March 7, 2005